

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

NICHOLAS VOVOS,

Plaintiff,

v.

D. MARTINEZ, et al.,

Defendants.

No. 2:21-CV-0837-KJM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
 2 with at least some degree of particularity overt acts by specific defendants which support the
 3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
 4 impossible for the Court to conduct the screening required by law when the allegations are vague
 5 and conclusory.

6 On June 8, 2021, the Court issued an order addressing the sufficiency of Plaintiff's
 7 complaint. See ECF No. 9. The Court summarized Plaintiff's allegations as follows:

8 Plaintiff names the following as defendants: (1) D.
 9 Martinez; (2) John Doe #1; (3) John Doe #2; (4) John Doe #3; and (5) Sgt.
 10 Phillips. See ECF No. 1, pg. 1. According to Plaintiff, the events giving
 rise to the complaint occurred at California State Prison – Sacramento
 (CSP-Sac.). See id. Plaintiff presents two claims.

11 In his first claim, Plaintiff alleges Defendants D. Martinez
 12 and John Doe #1 unnecessarily restrained Plaintiff in waist and leg irons
 with the knowledge that Plaintiff has a medical condition that causes him
 13 to lose his balance and prevent him from catching himself. See id. at 11.
 According to the complaint, Plaintiff was scheduled for a medical
 14 appointment and escorted by Defendants Martinez and Doe #1. See id.
 Plaintiff claims he nearly fell when Martinez placed the chains on him and
 15 Plaintiff informed Defendants about his carpal tunnel and the pinched
 nerve in his back. See id. at 6-7. Plaintiff claims Martinez assured him
 that Martinez and Doe #1 would “have a hold of him as long as he was in
 16 leg-irons.” Id. at 12.

17 Plaintiff claims he was then escorted to Holding Room #3
 in Building-56, where Martinez instructed Plaintiff to sit until his
 18 appointment. See id. at 8. Plaintiff states that he informed Defendants of
 his concern that the room was unsanitary and, if he were left in the room
 19 alone, that he would be unable to protect himself if he fell in his restraints.
See id. at 12. Plaintiff claims his concerns “were not taken seriously” and
 that Martinez “summoned Plaintiff to the door to grab a wet towel to clean
 20 the table” with the knowledge that Plaintiff has trouble standing on his
 own. Id. at 13. Plaintiff alleges that when he stood up, his leg chain caught
 21 on a bolt that anchored his stool to the cement. See id. at 10. Plaintiff
 claims he hit the floor and “split[] the skin above his left temple wide
 22 open, swelling his left eye partial closed, and severely bruised.” Id.

23 Accompanying Plaintiff's complaint are copies of form
 “CDCR 7219,” also known as medical report of injury, from March 23
 24 and March 26, 2021. The March 23 form reports active bleeding and a
 laceration on the left side of Plaintiff's face. See ECF No. 1, Ex. A., pg. 1.
 The March 26 form reports nine stitches and four dark brown spots around
 25 the laceration. See id. at 2. Plaintiff alleges that his injury was not properly
 documented. See id.

26 In his second claim, Plaintiff alleges that on March 26,
 2021 – three days after Plaintiff's fall – Plaintiff was denied photographs
 27 of his injuries and the opportunity for a taped interview to document the
 incident. See id. at 16. Plaintiff claims his request was denied when
 Defendant Phillips learned the evidence would be used for a complaint
 28 against Defendants. See id. at 17. Plaintiff alleges that Phillips attempted

“to interfere and/or obstruct Plaintiff from obtaining material evidence to bring civil litigation.” Id.

ECF No .9, pgs. 2-3.

The Court concluded that Plaintiff’s complaint states a cognizable Eighth Amendment claim against Defendant Martinez based on the alleged use of excessive force and deliberate indifference to his safety and health, as outlined in Plaintiff’s first claim. See id. at 3. The Court otherwise found Plaintiff’s complaint deficient, stating:

. . . Plaintiff’s second claim, made against Defendant Phillips, is less clear in that he does not sufficiently state the legal basis of the claim. Specifically, while Plaintiff states that Defendant Phillips denied him photographs and a taped interview, it is unclear whether Plaintiff is alleging that he was unable to bring a grievance or whether Phillips prevented Plaintiff from filing with the courts. The Court will consider both possibilities.

To the extent Plaintiff’s second claim is premised generally on availability of a particular grievance process, prisoners have no stand-alone due process rights related to the administrative grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling inmates to a specific grievance process). Because there is no right to any particular grievance process, it is impossible for due process to have been violated by ignoring or failing to properly process grievances. Numerous district courts in this circuit have reached the same conclusion. See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal. 1999) (finding that failure to properly process grievances did not violate any constitutional right); Cage v. Cambra, 1996 WL 506863 (N.D. Cal. 1996) (concluding that prison officials’ failure to properly process and address grievances does not support constitutional claim); James v. U.S. Marshal’s Service, 1995 WL 29580 (N.D. Cal. 1995) (dismissing complaint without leave to amend because failure to process a grievance did not implicate a protected liberty interest); Murray v. Marshall, 1994 WL 245967 (N.D. Cal. 1994) (concluding that prisoner’s claim that grievance process failed to function properly failed to state a claim under § 1983).

Prisoners do, however, retain a First Amendment right to petition the government through the prison grievance process. See Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995). Therefore, interference with the grievance process may, in certain circumstances, implicate the First Amendment. To the extent Plaintiff intends to bring a claim under the First Amendment related to access to an available grievance process or access to the courts, Plaintiff has not alleged sufficient facts to sustain a First Amendment claim based on denial of the ability to petition the government for redress.

Prisoners have a First Amendment right of access to the courts. See Lewis v. Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right in the context of prison grievance procedures). This right includes petitioning the government through the prison

1 grievance process. See id. Prison officials are required to “assist inmates
2 in the preparation and filing of meaningful legal papers by providing
3 prisoners with adequate law libraries or adequate assistance from persons
4 trained in the law.” Bounds, 430 U.S. at 828. The right of access to the
5 courts, however, only requires that prisoners have the capability of
6 bringing challenges to sentences or conditions of confinement. See Lewis,
7 518 U.S. at 356-57. Moreover, the right is limited to non-frivolous
8 criminal appeals, habeas corpus actions, and § 1983 suits. See id. at 353
9 n.3 & 354-55. Therefore, the right of access to the courts is only a right to
10 present these kinds of claims to the court, and not a right to discover
11 claims or to litigate them effectively once filed. See id. at 354-55.

12 As a jurisdictional requirement flowing from the standing
13 doctrine, the prisoner must allege an actual injury. See id. at 349. “Actual
14 injury” is prejudice with respect to contemplated or existing litigation,
15 such as the inability to meet a filing deadline or present a non-frivolous
16 claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir.
17 2007). Delays in providing legal materials or assistance which result in
18 prejudice are “not of constitutional significance” if the delay is reasonably
19 related to legitimate penological purposes. Lewis, 518 U.S. at 362.

20 Plaintiff states in his second claim that he was denied
21 certain documentation to support a grievance, specifically photographs
22 and a video. Plaintiff’s complaint, however, does not indicate that
23 Defendant Phillips prevented Plaintiff from exercising his First
24 Amendment right to petition for redress or that he sustained an actual
25 injury as a result.

26 Plaintiff will be provided an opportunity to amend to cure
27 these defects.

28 ECF No. 9, pgs. 3-5.

Plaintiff was cautioned that failure to file a first amended complaint within 30 days
of the date of the Court’s June 8, 2021, order would result in findings and recommendations that
the action proceed on Plaintiff’s first claim against Defendant Martinez and that the second claim
against Defendant Phillips be dismissed. To date, Plaintiff has not filed an amended complaint
addressing the defects in his second claim, which the Court now recommends be dismissed for
the reasons outlined in the June 8, 2021, order. By separate order, the Court will direct service of
the complaint on Defendant Martinez.

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1 Based on the foregoing, the undersigned recommends that this action proceed on
2 Plaintiff's first claim against Defendant Martinez and that the second claim and all remaining
3 defendants be dismissed for failure to state a claim.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court. Responses to objections shall be filed within 14 days after service of
8 objections. Failure to file objections within the specified time may waive the right to appeal. See
9 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 Dated: September 8, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE